

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 8011 of 2000****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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GUJARAT WATER SUPPLY & SEWERAGE BOARD - Petitioner
Versus

JASUBHAI KABHAI HARIJAN - Respondent

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Appearance :

MR HS MUNSHAW for Petitioner,
NONE for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 21/08/2007****ORAL JUDGMENT**

1. Heard Mr.H.S. Munshaw, learned counsel for the
petitioner. None for the respondent.

2. Being aggrieved by the award dtd.29/1/2000 passed by
the Labour Court, Vadodara in Reference No.466 of 1993

directing reinstatement of the respondent workman with 100% back wages and other benefits including continuity of service, the employer is before this Court under Article 227 of the Constitution of India with a submission that the award is bad.

3. Mr. Munshaw, learned counsel for the petitioner firstly submitted that the workman was engaged in a time bound programme and as the time limit fixed in the order of appointment came to an end, the petitioner was entitled to terminate the services of the workman. It was also contended that the court below was unjustified in directing 100% back wages without looking into the conduct of the workman.
4. None appears for the respondent.
5. From the records it would clearly appear that the workman was appointed under various orders for a fixed period to work as a Sweeper. None of the orders annexed with the writ application show that the respondent workman was appointed under a scheme or under a programme, specially sponsored either by the petitioner or by any other authority. It is also not in dispute before me that the alleged programme continues and even otherwise after the first appointment order

came to an end which was for a fixed time, yet another order and other orders were issued in favour of the workman. It is not in dispute before me that in 12 calender months preceding the date of removal, the workman had worked for 240 or more days. From the appointment order at Annexure-C, it would appear that the respondent was appointed for a period between 15/1/1991 and 14/4/1991. Mr.Munshaw, learned counsel for the petitioner submits that this appointment would be taken to be time bound programme / appointment, however, later on realising his mistake, he submitted that this would be a fixed term appointment.

6. Law on the point of fixed term appointment has already been settled by the Supreme Court in number of matters and even otherwise under the fixed time appointment within a period of 12 months preceding the date of retrenchment / removal, if such a workman works for 240 or more days, he would be deemed to be in continuous service. Once such a person is taken to be in continuous service, he would stand protected under Sec.25(F) of the Industrial Disputes Act and his services cannot be terminated, except in accordance with law.

7. It was next contended by Mr.Munshaw that the court

below was unjustified in awarding full back wages less appreciating the conduct of the workman that at least for a period of two years, he did not come to the Labour Court.

8. Taking into consideration that the workman had come to the Labour Court after a long lapse of time, I am of the opinion that for the period between the termination and date of reference, the workman would be entitled to 30% back wages, but, from the date of reference till the date of the award, he would be entitled to 60% back wages.
9. The petition to the extent indicated above relating to back wages only is allowed, however, other part of the award is maintained. No costs.

(R.S. GARG, J.)

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